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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,234	07/06/2001	Mark Roland Boeder	10451.0016.NPUS00	3988

7590

05/30/2003

Mark K. Dickson
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EXAMINER

KIZILKAYA, MICHELLE R

ART UNIT

PAPER NUMBER

1661

DATE MAILED: 05/30/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/000,234

Applicant(s)

BOEDER

Examiner

FIZILKAYA

Group Art Unit

1661

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 4/1/03

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 4 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
 - ☐ Interview Summary, PTO-413
 - ☐ Notice of Reference(s) Cited, PTO-892
 - ☐ Notice of Informal Patent Application, PTO-152
 - ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
 - ☐ Other _____

Office Action Summary

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DETAILED ACTION

Status of the Application

Applicant has resolved all 35 U.S.C. 112 issues from the previous Office Action Rejection from October 1, 2002. Applicant's response has been received and entered as papers no. 9 and 10 on April 1, 2003.

Claim Rejection

35 U.S.C. 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by any one of the following; Community plant Variety Rights (CPVR) published application in the European Community, Official CPVO Gazette, the CPVO web site, and Ficor Catalogs 1998-200.

Applicant's response to the Request for Information 37 C.F.R. 1.105 resulted in applicant's admission of sale of the instant plant as early as March 28, 1998 outside the U.S. coupled with the admission of publication of the foreign filing as well as commercial publication which also occurred more than one year prior to the U.S. filing.

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As the plant was publicly available more than one year prior to the U.S. filing and because information regarding the new invention was available in the public domain also more than one year prior to the U.S. filing, no claim is allowed.

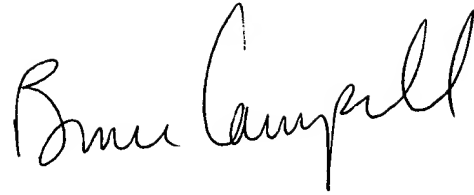
Future Correspondence

Any inquiry concerning this communication from the Examiner should be directed to Michelle R. Kizilkaya whose telephone number is (703) 308-4324. The Examiner can normally be reached Monday through Friday from 9:00 am to 5:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (703) 308-4205. The fax phone number for the group is (703) 305-3014 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

M. Kizilkaya

A handwritten signature in black ink, reading "Bruce Campell". The signature is written in a cursive style with a large, looped "B" and a long, sweeping "l" at the end.

BRUCE R. CAMPELL, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600